

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

ADJUSTACAM LLC,	§	
	§	
Plaintiff	§	Civil Action No. 6:10-cv-00329-LE
	§	
v.	§	<b>JURY TRIAL DEMANDED</b>
	§	
AMAZON.COM, Inc. et al	§	
	§	
Defendants	§	
	§	

**DEFENDANT DELL INC.'S NOTICE OF JOINDER TO MOTION FOR PARTIAL  
SUMMARY JUDGMENT THAT ADJUSTACAM IS NOT ENTITLED TO PRE-SUIT  
DAMAGES PURSUANT TO 35 U.S.C. § 287(a)**

On August 1, 2011, a Motion for Partial Summary Judgment (Dkt. No. 473) was filed in the referenced action by the following Defendants: Auditek Corporation; Best Buy Co., Inc.; Best Buy Stores, LP; BestBuy.com, LLC; Baltic Latvian Universal Electronics, LLC d/b/a Blue Microphones, LLC; Blue Microphones, LLC; CompUSA.com, Inc.; Digital Innovations, LLC; Fry's Electronics, Inc.; Gear Head, LLC; Hewlett-Packard Company; J&R Electronics, Inc., d/b/a J&R; Kohl's Corporation d/b/a Kohl's; Kohl's Illinois, Inc.; Micro Electronics, Inc. d/b/a Micro Center; Office Depot, Inc.; Overstock.com, Inc.; Systemax, Inc. d/b/a CompUSA, Inc.; TigerDirect, Inc.; Sakar International, Inc.; and Target Corporation (collectively "the Moving Defendants"). Defendant Dell Inc. ("Dell") hereby joins in the Moving Defendants' Motion for Partial Summary Judgment (referred to as "the Motion" or "Defs. Mtn."), for the following reasons:

**I. All Statements and Arguments Contained in the Motion Apply to Dell**

In the Motion, the Moving Defendants provided the Court with facts, legal arguments, declarations and evidentiary exhibits that prove Plaintiff, AdjustaCam LLC ("AdjustaCam") is

not entitled to pre-suit damages pursuant to 35 U.S.C. § 287(a) because it did not provide actual notice of alleged infringement of United States Patent No. 5,855,343 (“the ‘343 Patent”) to the Moving Defendants prior to filing its Complaint in this action. All of the statements, arguments and evidence contained in the Motion apply to Dell as well.

**II. Dell did not Receive any Communication From AdjustCam Prior to Filing of This Suit**

The Statement of Undisputed Material Facts (Defs. Mtn. at 4-5) also applies to Dell. Like the other Moving Defendants, Dell never received any communication from AdjustaCam, Global Media, or APAC regarding the ‘343 Patent or Dell’s alleged infringement of this patent by specific products, or any communication that could be construed as actual notice under 35 U.S.C. § 287(a).

Attached as Exhibit 1 to this Notice is a true and correct copy of the Declaration of Anthony E. Peterman, Legal Director, Patents at Dell Inc., who declares that Dell has reviewed its legal records and could not locate any documents that reflect in any way the receipt of any notice from AdjustaCam (or one of its predecessors-in-interest) of alleged infringement of the ‘343 patent.

**III. Dell Agrees That Summary Judgment Should not be Delayed**

Dell also joins in the Moving Defendants’ arguments that summary judgment should not be delayed to permit additional discovery (Def. Mtn. at 8-10), because Dell, like the other Moving Defendants, possesses no evidence that AdjustaCam communicated a charge of infringement of the ‘343 Patent before commencing this litigation.

FOR THESE REASONS, Defendant Dell Inc. joins the Moving Defendants’ Motion for Partial Summary Judgment and respectfully requests that this Court bar AdjustaCam from

recovering any damages for the alleged infringement of the '343 Patent for the period before the filing of AdjustaCam's Complaint in this action.

Dated: August 4, 2011

Respectfully submitted,

/s/ Roger J. Fulghum

Roger Fulghum  
Texas Bar No. 00790724  
[roger.fulghum@bakerbotts.com](mailto:roger.fulghum@bakerbotts.com)  
BAKER BOTTS L.L.P.  
One Shell Plaza  
910 Louisiana  
Houston, Texas 77002-4995  
Telephone: 713-229-1234  
Facsimile: 713-229-1522

Paula D. Heyman  
Texas Bar No. 24027075  
[paula.heyman@bakerbotts.com](mailto:paula.heyman@bakerbotts.com)  
BAKER BOTTS L.L.P.  
98 San Jacinto Blvd., Suite 1500  
Austin, Texas 78701-4075  
Telephone: 512-322-2500  
Facsimile: 512-322-2501

Deron R Dacus  
Shannon Marie Dacus  
Ramey & Flock  
100 East Ferguson, Ste 500  
Tyler, TX 75702  
Telephone: 903/597-3301  
Facsimile: 903/597-2413  
Email: [ddacus@rameyflock.com](mailto:ddacus@rameyflock.com)  
Email: [shannond@rameyflock.com](mailto:shannond@rameyflock.com)

ATTORNEYS FOR DEFENDANT, Dell Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served on August 4, 2011, with a copy of this notice by the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by electronic mail, facsimile transmission and/or first class mail on this same date.

/s/ Roger Fulghum  
Roger Fulghum